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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

P&D CONSULTANTS, INC., Plaintiff and Appellant, v. CITY OF CARLSBAD, Defendant and Appellant.	D060760 (Super. Ct. No. GIN052850)

APPEALS from an order of the Superior Court of San Diego County, Earl H. Maas III, Judge. Affirmed in part; reversed in part with directions.

Vivoli Saccuzzo, Michael W. Vivoli and Jason P. Saccuzzo for Plaintiff and Appellant.

Law Offices of Anthony T. Ditty and Anthony T. Ditty for Defendant and Appellant.

This is the third round of appeals in this case. In 2010 we reversed a judgment for P&D Consultants, Inc. (P&D) in excess of $109,000 on its first amended complaint (complaint) against the City of Carlsbad (the City) for breach of contract arising from P&D's provision of design services for the City's golf course. We held the contract expressly prohibited change orders for extra work without the City's written

authorization, and the trial court erred by instructing the jury that the contract could be modified orally or through the parties' conduct. (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1341-1342 (*P&D I*).) In *P&D I*, we also affirmed a judgment against P&D in excess of $6,600 on the City's cross-complaint for defective or incomplete work, a small fraction of the amount it sought. (*Id.* at p. 1335.)

P&D's complaint also alleged the City's refusal to pay for the extra work violated prompt payment statutes, including Civil Code section 3320 (section 3320). In *P&D I*, we rejected P&D's contention the court erred by directing a verdict in the City's favor on the prompt payment cause of action, explaining the "issue is moot because P&D is not entitled to payment for any extra work without a written change order." (*P&D I*, *supra*, 190 Cal.App.4th at p. 1344.)

Section 3320 includes an attorney fees clause. (§ 3320, subd. (b).) In a postjudgment order, the trial court denied the City's motion for fees on the prompt payment cause of action on the ground the City was not the prevailing party because it did not recover a net judgment. In a separate appeal in 2011, based on *P&D I*, *supra*, 190 Cal.App.4th 1332, we reversed the order and remanded the matter to the court for its determination of the amount of an award. (*P&D Consultants, Inc. v. City of Carlsbad* (Feb. 1, 2011, D055533) [nonpub. opn.] (*P&D II*).)

Here, P&D appeals the postremand order, which awarded the City a total of $266,870.40 in attorney fees as follows: $156,885.30 for services through trial, which includes a 10 percent lodestar enhancement; $107,735.10 for services on appeal, also including a 10 percent lodestar enhancement; and $2,250 incurred in obtaining fees. The

court excluded fees the City incurred through trial *on its cross-complaint*, on the ground the issues in the complaint and cross-complaint were not inextricably linked and apportionment was practicable. The court, however, allowed fees the City incurred on appeal on the cross-complaint.

P&D contends section 3320 is inapplicable and thus attorney fees are unavailable to the City as a matter of law, because its claim for extra work does not pertain to the timeliness of progress or retention payments due under the contract. Alternatively, P&D contends the court abused its discretion by not apportioning the fees and excluding those incurred in defending against the breach of contract claim. P&D also contends the court erred by applying a 10 percent lodestar enhancement without any explanation.

The City also appeals, contending the court abused its discretion by denying it attorney fees incurred through trial on its cross-complaint since it shared common issues with P&D's complaint and apportionment was impracticable. The City also contends the court erred by awarding it only a fraction of the fees it incurred in pursuing fees.

We conclude the court abused its discretion by awarding the City fees it incurred on appeal on its cross-complaint and by severely limiting the award for fees it incurred on the fee motions. We reverse the order insofar as these issues are concerned and remand for a new hearing. In all other respects, we affirm the order.

DISCUSSION[1]

I

P&D's Appeal

A

Applicability of Section 3320

P&D contends section 3320 is inapplicable to its extra work claim, and thus the fee award was improper as a matter of law. "On appeal this court reviews a determination of the legal basis for an award of attorney fees de novo as a question of law." (*G. Voskanian Construction, Inc. v. Alhambra Unified School Dist.* (2012) 204 Cal.App.4th 981, 995.)

Section 3320 requires a public agency to "pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract." (§ 3320, subd. (a).) If the agency, however, "disputes in good faith any portion of the amount due, it may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld is not subject to any penalty authorized by this section." (*Ibid.*)

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1 The facts pertaining to the parties' dispute are set forth in *P&D I, supra*, 190 Cal.App.4th 1332. In summary, the parties' original contract price of $556,745 was increased by a total of $63,525.50 under four written change orders authorizing extra work, and the dispute was over whether P&D was entitled to an additional $109,093.31 for extra work that was not authorized by a written change order. (*Id.* at pp. 1336-1337.)

A violation of section 3320, subdivision (a) entitles the prime design professional "to a penalty of 1 1/2 percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made." (§ 3320, subd. (b).) Further, "[i]n any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney's fees and costs." (*Ibid.*)[2]

P&D's theory is that "extra work by definition is work performed beyond the contract, and the payment of extra work, unless otherwise specified in the contract, does not constitute the payment of retention or progress payments." P&D asserts that "[a]rguably, the only remaining 'progress payment' due under the parties' contract [as amended by written change orders] was the unpaid balance of $621.81," and thus the City's fees would be limited to those incurred in defeating P&D's attempt to collect a penalty on that amount. P&D asserts its prompt payment claim "was, at very best, a nominal issue in the case which was effectively abandoned by P&D by the time of trial."

P&D violates a basic principal of appellate practice by not accurately representing the record. (Cal. Rules of Court, rule 8.204(2)(C).) Unless the appellant sets forth all material evidence on a point, we may deem the point forfeited. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

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2 "California follows the 'American Rule,' under which each party to a lawsuit must pay its own attorney fees unless a contract or statute or other law authorizes a fee award." (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 237.) Attorney fees are allowed as an item of costs only when they are authorized by contract, statute, or law. (Code Civ. Proc., §§ 1021, 1032, 1033.5, subd. (a)(10).)

Contrary to P&D's current position, its attorney filed a declaration in opposition to the City's fee motions, which concedes, "Although P&D's original Complaint set forth four separate causes of action, P&D's prompt payment claim was largely derivative of P&D's breach of contract claim." (See *Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 556 (*Thompson*) [further apportionment unnecessary when plaintiff conceded statutory and breach of contract claims were related].) Moreover, the complaint's cause of action for violation of section 3320 alleged that as a result "P&D has been damaged in an amount exceeding $109,093.31," the identical amount the breach of contract cause of action specified was due; the City "failed to timely pay P&D an amount exceeding $109,093.31"; it "has improperly withheld these payments as 'retention proceeds,' " and its "failure to pay was not the result of a good faith dispute as to the amounts due." Further, throughout the appeal in *P&D I*, P&D continued to argue the prompt payment statutes applied. (*P&D I*, *supra*, 190 Cal.App.4th at p. 1344.)

The court properly found the City is entitled to fees under section 3320, an issue we had already resolved in *P&D I.* The City unquestionably prevailed on an "action for the collection of amounts withheld in violation of [section 3320]." (§ 3320, subd. (b).) P&D is mistaken in asserting the City's argument that section 3320 was inapplicable abrogates its entitlement to fees in ultimately establishing the inapplicability. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 610-611 [in context of contractual attorney fees, prevailing party is entitled to fees "by establishing that the contract is invalid, inapplicable, unenforceable, or nonexistent"].) If P&D wished to avoid the potential of

an adverse attorney fees ruling, it should not have framed its extra work claim as implicating section 3320. (See *Korech v. Hornwood* (1997) 58 Cal.App.4th 1412, 1420, citing Abraham Lincoln, Letter to Usher F. Linder (Feb. 20, 1848), in The Quotable Lawyer (Shrager & Frost edits. 1986) ¶ 96.6, p. 241 [" 'In law it is a good policy never to plead what you need not, lest you oblige yourself to prove what you cannot.' "].) The record shows that from the onset of the dispute, P&D threatened the City with the specter of an attorney fees award as a leveraging tool.

B

Apportionment

Alternatively, P&D faults the court for not properly apportioning the City's fees. " 'When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action. However, the joinder of causes of action should not dilute the right to attorney fees.' " (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 686-687.) "Such fees need not be apportioned when incurred for representation on an issue common to both causes of action in which fees are proper and those in which they are not. [Citation.] Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units." (*Id.* at p. 687; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133 ["All expenses incurred on the common issues qualify for an award."].)

The City made no effort to apportion attorney fees, and instead it sought *all* fees. It brought two separate motions for fees incurred through trial and on appeal. For trial work, the City sought either $440,206, or $440,315; and for appellate work, the City sought either $97,941 or $107,126. The lower amounts were based on the actual discounted rate of the City's attorneys, $225 per hour, and the higher amounts were based on a rate of $250 per hour, which the City argued was "the hourly rate typically charged in the community."

The City also sought $5,750 for preparing the trial fees motion, and $2,250, for preparing the appellate fees motion, "subject to adjustment depending on the additional fees incurred in responding to any opposition or motion to tax and appearance at any oral argument." The City argued apportionment was impracticable because the prompt payment and breach of contract claims, and the City's cross-complaint, were "inextricably intertwined."

In its opposition, P&D argued the City was required to apportion fees because the prompt payment cause of action was "a virtual non-issue," and since it did not do so, the court should adopt P&D's apportionment. P&D argued the City actually had apportioned fees in its prior motion for fees, proving the practicability of doing so. P&D also argued, however, that the City's previous apportionment was "totally divorced from reality." By P&D's calculation, attorney billings showed that on the prompt payment claim the City was entitled to $8,415 in fees through trial (37.4 hours at $225 per hour), and $10,012.50 in fees for appellate work (44.5 hours at $225 per hour).

Because the trial judge had retired, another judge heard the motions. He acknowledged, "So I really can't base any decision that I make on personal observation of the skills or the focus of the case or things along those lines."

P&D emphasized that in the City's previous fee motion it apportioned fees, through the 2009 declaration of its attorney, Anthony Ditty. The court asked Ditty what it should do if it determined apportionment was appropriate. Ditty argued against apportionment, and stated, "I really don't have any way to apportion."

After taking the matter under submission, the court issued an order awarding the City $156,885.30 in fees through trial, which consists of $142,623 and what the court referred to as a "10% [lodestar] multiplier." The order states the basis for this award was Ditty's 2009 declaration, and adds the award was "reasonable, despite the current claim that such allocation is 'too interrelated' to be accomplished." The order awards the City $107,735.10 in fees for appellate work, which consists $97,941, and, again, a "10% [lodestar] multiplier."

The court's order does not offer any additional explanation. Ditty's 2009 declaration pertains only to fees incurred through trial. The declaration breaks down attorney billings into "distinct categories" that total $292,878.[3] The court presumably

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[3] The categories are as follows: researching and drafting initial demurrer and motions to strike, $2,970; researching and drafting second motion to strike prompt payment allegations, $1,912.50; drafting answer, $652.50; dispositive motion on prompt payment claim, $3,442.50; written discovery and responses related to prompt payment claim, $517.50; work relating to resolution no. 9 and discovery concerning City's intent, $7,717.50; discovery and pretrial work generally relating to plaintiff's claims, $33,183; trial preparation and trial excluding cross-claim work, $89,640; cross-claim related work, $150,255; and $2,587.50 for preparing the fee motion.

arrived at the lodestar amount of $142,623 for trial work by deducting the $150,255 for cross-claim related work, because the math is exact.

On this record, we cannot say the court abused its discretion by not further apportioning the fees *incurred through trial* to exclude any fees incurred on P&D's breach of contract claim. Contrary to P&D's position, the prompt payment claim *was* dependent on the outcome of its breach of contract claim. To defeat the claim the City was tasked with proving it did not breach the parties' contract by refusing to pay P&D for extra work not authorized in writing. As we noted in *P&D I*, that proof mooted P&D's prompt payment claim. (*P&D I*, *supra*, 190 Cal.App.4th at p. 1344.) P&D's assertion the prompt payment claim was "essentially a non-issue" is wrong, since the City was required to litigate the issue through appeal.

P&D asserts that when a breach of contract claim is coupled with a prompt payment claim, section 3320 always requires apportionment because it narrowly authorizes fees incurred in prosecuting or defeating a statutory penalty, "which is separate and apart from any contractual recovery." Section 3320, however, says nothing of the sort. Further, P&D cites no authority suggesting that well-established rules of apportionment are inapplicable, and we reject that notion.

Further, the City is entitled to fees incurred on appeal *pertaining to the complaint*. We agree with P&D, however, that the court should have apportioned fees incurred on appeal *pertaining to the cross-complaint*. As discussed below in the section devoted to the City's appeal, the court properly found apportionment of fees incurred on the cross-complaint was practicable.

The court's order states, "The court finds defendants' argument that, at least on appeal, the [cross-complaint] issues were *substantially interrelated*, to be persuasive." (Italics added.) We conclude the finding is erroneous, as it conflicts with the court's exclusion of fees the City incurred through trial on the cross-complaint. In *P&D I*, the City's appeal included issues on both the complaint and cross-complaint. As to the cross-complaint, the City unsuccessfully asserted the court abused its discretion by excluding the testimony of a nonretained expert and certain testimony of a designated expert. (*P&D I, supra*, 190 Cal.App.4th at pp. 1346-1349.) We reverse the order insofar as it concerns fees on appeal, and remand the matter for a new hearing on the issue.

C

Lodestar Enhancement

Additionally, P&D contends reversal is required because the court "erred by failing to provide an explanation of the basis of the lodestar enhancement." We disagree.

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the *reasonable hourly rate*. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' [Citation.] *The reasonable hourly rate is that prevailing in the community for similar work*." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 ["lodestar is the basic fee for comparable legal services in the community"].) " 'The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. [Citations.]

This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel.' " (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260.)

"After making the lodestar calculation, the court may augment or diminish that amount based on a number of factors specific to the case, including the novelty and difficulty of the issues, the attorneys' skill in presenting the issues, the extent to which the case precluded the attorneys from accepting other work, and the contingent nature of the work. [Citation.] 'The purpose of such adjustment is to fix a fee at the fair market value for the particular action.' " (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 616.)

An enhancement may be referred to as a "multiplier" or an "enhancement multiplier." (See, e.g., *Center for Biological Diversity v. County of San Bernardino*, *supra*, 188 Cal.App.4th at p. 617; *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 395.) A "court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable." (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1139.) "[W]hen determining the appropriate enhancement, a trial court should not consider [enhancement] factors to the extent they are already encompassed within the lodestar." (*Id.* at p. 1138.)

P&D cites this court's opinion in *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615 (*Ramos*), a class action suit challenging certain mortgage lenders' practices. In *Ramos*, the trial court applied a multiplier of 2.5 to the lodestar amount, for an attorney fees award of $2,171,629.38. (*Id.* at p. 620.) We reversed the fee order and remanded the matter for further proceedings because it appeared the factors of attorney skill and public benefit were double counted in the lodestar amount and the multiplier. (*Id.* at p. 626.) We noted "[u]nder all the relevant circumstances, we would not be justified in presuming in this case that the trial court considered only appropriate factors in applying this particular multiplier to the lodestar figure. [Citation.] . . . [Citations.] When all applicable factors are considered, no reasonable basis for the court's action is currently evident on this record . . . with respect to the selection of this relatively large multiplier figure." (*Id.* at p. 629.)

P&D relies on the following language, which we offered the trial court for its guidance on remand: "In general, where the trial court decides to depart from the lodestar attorney fee approach to select and apply a multiplier, it must make appropriate findings on the factors recognized by case law to explain this discretionary determination in such a manner as to make meaningful appellate review possible." (*Ramos*, *supra*, 82 Cal.App.4th at p. 629.)

Generally, however, trial courts are not required to provide a detailed explanation of how it arrived at a fee award. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294-1295; *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 65-67.) California courts have explicitly departed from federal law requiring district courts to

explain their fee awards with particularity. (See, e.g., *Gorman*, *supra*, at pp. 66-67; *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 970.)

Even if the court were required under *Ramos*, *supra*, 82 Cal.App.4th 615 to specify its reasoning, however, remand is unwarranted because it would merely waste judicial resources. "The law neither does nor requires idle acts." (Civ. Code, § 3532; *In re Vincent S.* (2001) 92 Cal.App.4th 1090, 1093 [remand unjustified when same result would attain].) The record shows the City did not claim a multiplier based on exceptional representation. Rather, the court's sole reason for applying a 10 percent multiplier to the lodestar amount was to increase the hourly fees from the actual discounted rate of $225 to a reasonable rate of approximately $250. The City argued, "There really can be no dispute that the hourly rate charged to the City was extremely low for the type of work performed and the experience of the attorneys involved."

Ditty's 2011 declaration states he had 26 years of experience and had represented institutional clients at a rate of between $275 and $325 per hour, but in this litigation his rate was reduced to $225 per hour. Further, his cocounsel's rates were typically between $250 and $300 per hour and his rates were likewise reduced to $225 per hour. The declaration states that opposing counsel submitted a declaration in another action claiming he and his cocounsel had hourly rates of $250 and $300 per hour, and they sought and obtained a rate of $250 per hour. P&D does not suggest an hourly rate of $250 was unreasonable, and we find no impropriety.

II

City's Appeal

A

Apportionment

The City contends the court erred by disallowing fees incurred in prosecuting its cross-complaint, because the cross-complaint did not stand alone, and rather, it "was part of the defense to the prompt payment claim relative to the City's good faith withholding and whether or not any money could be owed to P&D on its claim." We are unpersuaded.

The City's cross-complaint contained a single cause of action for breach of contract. It alleged numerous instances of deficient or incomplete work on P&D's part, such as the "failure to provide for remedial grading and soil removal; inadequate description of bid items, and insufficient quantities, as well as a lack of measurement and payment descriptions in most areas of work." Further, it alleged "[t]here was a lack of coordination between the three main contracts," the "golf course drainage system was inadequately designed as there was no provision for the installation of minor drain lines," and P&D failed to provide the City "with necessary plans required notwithstanding repeated requests that it do so."

The cross-complaint alleged damages according to proof at trial, but gave some examples. For instance, "because of a lack of coordination between the work, which was to be performed under the various contracts, [the City] has incurred additional costs in the administration of the contract, . . . which is believed to be in excess of $224,360, ...

Additionally, [it] had to pay its consultant for additional time spent correcting [P&D's] plans in an amount believed to be in excess of $93,970." Further, P&D's failure to properly address the requirements of the Storm Water Pollution Prevention Plan resulted in the City "being notified of a violation by the Regional Water Quality Control Board," resulting in a penalty of $23,500.

The cross-complaint does not mention P&D's complaint, or allege it was intended to defeat P&D's claims for extra work or violation of the prompt payment statute, or establish an offset. Further, the cross-complaint does not pray for attorney fees under section 3320.

P&D's attorney, Michael Vivoli, submitted a declaration, which states: "[T]he City initially asserted that P&D was responsible for payment of approximately $6,000,000 of the $13,000,000 in change orders the City issued to the contractors it hired in connection with the Project." By the time of trial, however, the City asked the jury to award it approximately $172,000 on the cross-complaint.

Additionally, the Vivoli declaration states "[m]ost of the discovery conducted in this matter pertained to the City's defect claim," including depositions of the City's "three primary contractors . . . to figure out how P&D's allegedly deficient bid package made the project 'more expensive' for the City." Further, it states "[t]here was not a single expert retained by either side in connection with P&D's extra work claim," and in contrast, the City retained three experts in support of its defect claim, and P&D was required to retain experts in response.

P&D I discusses the City's expert witnesses on the cross-complaint, a licensed civil engineer, a geotechnical engineer, and a civil engineer and general contractor. (*P&D I*, *supra*, 190 Cal.App.4th at p. 1347.) We noted the "City prevailed on only one relatively minor component of its cross-complaint, for which it recovered damages of $6,614.69. On all other claims, the jury rejected the notion P&D breached the applicable standard of care." (*Id.* at p. 1349.)

On this record, we cannot say the court abused its discretion by disallowing the City attorney fees incurred in the prosecution of its cross-complaint. " ' "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." ' " (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1140.) The court could reasonably find that to defeat P&D's prompt payment claim, the City was not required to show P&D's work was defective or incomplete. Rather, since the complaint alleged the City's refusal to pay P&D for extra work violated section 3320, in its defense the City was required to defeat the extra work claim, which mooted the prompt payment claim. The City's dismal showing was irrelevant to its success on P&D's extra work and prompt payment claims. The City would have enjoyed the same outcome on the complaint had it not cross-complained against P&D.

The City cites *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073 (*Erickson*), in which this court held the trial court did not abuse its discretion by awarding contractual attorney fees incurred on a complaint and cross-complaints on the ground of "common issues requiring virtually identical evidence." (*Id.* at p. 1085.) We noted,

however, that "Erickson has not identified anything in the record compelling a contrary result. Indeed, by not including in the record a reporter's transcript of the testimony and other evidence introduced at trial, Erickson has failed to present an evidentiary record sufficient to show the trial court abused its discretion by not apportioning the attorney fee award to exclude fees incurred in defense of issues common to Erickson's complaint and the assigned cross-complaints." (*Id.* at pp. 1085-1086.) That is not the scenario here.

Further, *Erickson* does not, of course, stand for the proposition that complaints and cross-complaints are always interrelated for purposes of attorney fees. As we noted in *Erickson*, " '[o]nce we determine the trial court's findings have the requisite measure of support in the record, we cannot substitute our conclusions for those of the trial court.' " (*Erickson, supra,* 126 Cal.App.4th at p. 1086.) "A ' "showing on appeal is wholly insufficient if it presents a state of facts, a consideration of which, for the purpose of judicial action, merely affords an opportunity for a difference of opinion. . . . To be entitled to relief on appeal from the result of an alleged abuse of discretion it must clearly appear that the injury resulting from such a wrong is sufficiently grave to amount to a manifest miscarriage of justice." ' " (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 299.)

Thompson, *supra*, 155 Cal.App.4th 525, is also unhelpful to the City because it upheld the trial court's discretion in finding common issues, noting the "trial court, having heard the entire case, was in the best position to determine whether any further allocation of attorney fees was required or whether the issues were so intertwined that allocation would be impossible. [Citation.] Having impliedly concluded that there was no precise

methodology by which it could further apportion the fee request [citation], the trial court acted within its discretion." (*Id.* at p. 556.) Here, the court reasonably found allocation was possible.

B

Attorney Fees Motions

The City also contends there is no support in the record for the court's award of fees incurred on its two fee motions. " '[A]bsent circumstances rendering the award unjust, fees recoverable . . . ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim.' " (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1141.)

The City sought $5,570 for the cost of preparing the trial fees motion, and $2,250 for the cost of preparing the appellate fees motion, "subject to adjustment depending on the additional fees incurred in responding to any opposition or motion to tax and appearance at any oral argument." The City sought $250 per hour as the reasonable market value. In a supplemental request, the City sought an additional $10,192.50 for replying to P&D's opposition to the motion for trial fees and $2,812.50 for replying to its opposition to the motion for appellate fees, for a total request of $21,015. The court awarded the City only $2,250, a reduction of approximately 90 percent.

P&D did not argue the City's requested rate of $250 per hour was unreasonable. Without citing any supporting authority, P&D merely argued the court should not allow more than the $225 hourly discounted rate the City actually paid. Again, however, the City's attorneys were entitled to the reasonable market value of their services. (*Chacon v.*

Litke, supra, 181 Cal.App.4th at p. 1260.) As to the number of hours spent, P&D argued the City was entitled to only 11.5 hours for the motions, the number of hours claimed in the City's 2009 motion for fees. The 11.5 hours, however, was only for the motion for fees incurred through trial. They did not include hours incurred in bringing the new motion, necessitated by our ruling in *P&D II*, or in replying to P&D's opposition.

P&D asserts the court may have found the City "padd[ed]" its attorneys' fees, or severely discounted the City's request because it did not sufficiently document its hours. This is sheer speculation, which we ignore. The City's initial claims of $5,750 and $2,250 do not shock the conscience, as P&D would have us believe, and in opposition P&D served the City with 644 pages of opposition papers, which naturally drove the City's fees up considerably. Ditty attested to the hours spent, and "[t]estimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

On this record, we cannot ascertain any rational relationship between the small fee award and the actual fees incurred. Thus, we find abuse of discretion. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 686.) On remand, the court shall fix the reasonable amount of fees to which the City is entitled on the fee motions. (*Id*. at p. 687.)

C

Attorney Fees on Appeal

The City requests attorney fees on appeal under section 3320, subdivision (b), but it cites none of the applicable cost statutes or other law pertaining to how the "prevailing party" determination is made when there are two appeals and the results are mixed. (See, e.g., Code Civ. Proc., §§ 1032, subd. (a)(4); 1033.5, subd. (a)(10).) It is, of course, the requesting party's burden to cite applicable authority. Under the circumstances, we exercise our discretion to defer the issues of entitlement, and if so, amount, to the trial court so they may be properly briefed and argued. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 426 [it is "proper for a reviewing court to defer to the trial court" in making the "determination" of whether to award fees in the first instance]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 14:117.1, pp. 14-27.)

DISPOSITION

The order awarding the City $156,885.30 for services through trial is affirmed. The order is reversed to the extent the award of $107,735.10 for services on appeal includes fees the City incurred on appeal related to its cross-complaint. The order awarding $2,250 in fees for the attorney fee motions is also reversed since there is no rational relationship between the award and the actual fees incurred. The matter is remanded for further proceedings and for the court to fix the reasonable amount of fees to which City is entitled to for (1) the services on appeal not related to the cross-complaint and (2) the fee motions.

The parties are to bear their own costs on appeal.

MCCONNELL, P. J.

WE CONCUR:

MCDONALD, J.

AARON, J.